

Martin Brady  
Serial No. 09/228,109

B. A rejection of claims 3, 7 and 10-13, as unpatentable over PRESTO PLUS CAN OPENER PLUS in view of Davies (4,152,831) and Nielsen et al. (5,791,608) was repeated. Among other things, the effect was to withdraw the allowance of previously allowed claims 4, 5, 8, 9, 14 and 15.

C. Claim 10 was newly rejected as unpatentable over PRESTO CAN OPENER PLUS in view of newly cited Zelson patent no. 6,253,662.

D. Claims 4, 5, 8, 9, 14 and 15 were indicated allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, and to include all of the limitations of the base claim and any intervening claims.

E. Applicants' arguments filed July 12, 2004, were indicated to be unpersuasive without reasons given.

F. Additional art was made of record and stated to be "considered pertinent to applicant's disclosure."

These several items will be discussed in the same order below.

A. The grounds for rejection under 35 U.S.C. 112, second paragraph, involve two different issues.

The first issue is whether it is appropriate to recite "a sheath for a scissors on the back of said housing" when the

Martin Brady  
Serial No. 09/228,109

sheath itself includes the back wall of the housing. The examiner equates the "back of the housing" with the "back wall of the housing," and argues that the back wall of the housing cannot be "on" the housing.

The examiner's reasoning is believed to be faulty. A statement that the sheath is on "the back of the housing" locates the area of the sheath. A statement to the effect that "the back wall is part of the sheath" describes a particular construction of the sheath. Thus, there is nothing inconsistent in the claim recitations which the examiner finds to be in violation of 35 U.S.C. 112, second paragraph, with regard to the location or construction of the sheath.

The legal standard for definiteness is whether a claim reasonably apprises those of skill in the art of its scope. In re Warmerdam, 31 USPQ2d 1754, 1759 (CAFC 1994). Whether a claim is invalid for indefiniteness requires a determination whether those skilled in the art would understand what is claimed when the claim is read in the light of the specification. Orthokinetics Inc. v. Safety Travel Chairs Inc., 1 USPQ2d 1081, 1088 (CAFC 1986).

In view of the foregoing remarks and the applicable law, the rejection under 35 U.S.C. 112, second paragraph, in so far as it

Martin Brady  
Serial No. 09/228,109

is based on the examiner's perceived confusion between "the back of the housing" and "the back wall of the housing" should be withdrawn.

The second issue under 35 U.S.C. 112, second paragraph, is with regard to an uncertainty alleged by the examiner as to whether the "sheath" of claims 11 and 13 is the same structure as the holder of claim 10. This uncertainty surely could be avoided by reference to the disclosure of this application. Note especially the paragraph beginning on page 5, line 14, of the specification.

B. Applicants' has already addressed the rejection of claims 3, 7 and 10-13, as unpatentable over PRESTO PLUS CAN OPENER PLUS in view of Davies (4,152,831) and Nielsen et al. (5,791,608). The examiner's continued remarks concerning the rejection are unpersuasive.

C. The rejection of claim 10 under 35 U.S.C. 103(a), as unpatentable over PRESTO CAN OPENER PLUS in view of newly cited Zelson patent no. 6,253,662, is inappropriate and obviously based on hindsight. There is nothing in either reference that would suggest these references could be usefully combined or modified to produce the claimed can opener.

D. Claims 4, 5, 8, 9, 14 and 15 were previously allowed and

Martin Brady  
Serial No. 09/228,109

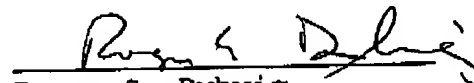
should again be allowed. See parts A and B above.

E. See B above.

F. The additional art made of record because "considered pertinent to applicant's disclosure" has been reviewed. Notably, the applications for the cited patents have effective filing dates subsequent to the filing date of the instant application and do not constitute prior art as to the instant application.

For the foregoing reasons, all of the claims of this application are deemed allowable. Favorable action is requested.

Respectfully submitted,

  
Roger S. Dybvig  
Registration No. 19,319  
22 Green Street  
Dayton, Ohio 45402  
(937) 461-1142